

**GARY GRAY,** )  
 )  
 **Plaintiff** )  
 )  
 **v.** ) **Civil No. 96-229-B**  
 )  
 **W & G ELECTRIC SERVICE, INC.,** )  
 **ET AL.,** )  
 )  
 )  
 **Defendants** )

The Court has before it the plaintiff's motion to amend the original complaint in this matter pursuant to Federal Rules of Civil Procedure 15(a) and 15(c)(3), as well as Local Rule 7 of the District of Maine, to substitute the name "TRECO Construction Services, Inc." for "Rust Engineering & Construction, Inc." as a party to the original complaint. The plaintiff explains that since filing suit in this matter, he has learned that the correct name of the prime contractor involved in the underlying incident is not "Rust Engineering & Construction, Inc.," but, rather, is "TRECO Construction Services, Inc.," which formerly was known as "The Rust Engineering Company." Concluding that the motion is untimely and that, in any event, it would be futile, the Court recommends that the motion be denied.

As an initial matter, the Court treats the plaintiff's motion to *substitute* parties as really being a motion to *add* a party. Unlike Rust Engineering & Construction, Inc., which properly was served with a complaint by the plaintiff and made a party to this action, TRECO has not been served and has not appeared in this action. In determining whether a party should be given leave to amend, a

court considers: (1) the hardship to the moving party if leave to amend is denied; (2) the reasons for the moving party's failure to include the proposed material in the original pleading; and (3) the injustice resulting to the party opposing the motion should it be granted. *Thibodeau v. Fujisawa USA, Inc.*, 151 F.R.D. 502, 503 (D. Me. 1993) (citing 6 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1487 (1990)).

The plaintiff contends that the motion should be granted because it satisfies the requirements of Rules 15(a) and 15(c)(3), to wit: the claim asserted arose out of the same circumstances set forth in the original pleading; TRECO may be said to have received notice of the action and will not be prejudiced; and TRECO knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. Not only is the Court unpersuaded that all of the above requirements have been met, the Court concludes that the motion is untimely. The proposed amendment has been raised very late in these proceedings. The original deadline for joinder of parties and amendment of pleadings in this matter was November 21, 1996. The plaintiff has failed to demonstrate that justice requires the amendment or that good cause exists pursuant to Federal Rule of Civil Procedure 16(b). *See Abbott v. Bragdon*, 893 F. Supp. 99, 101 (D. Me. 1995).

The Court also concludes that, in view of its recommended decision dated this same day to grant the defendants' motion for summary judgments on all counts of the plaintiff's complaint, the addition of TRECO as a party to this action would be futile. The Court concluded in that recommended decision that the plaintiff entered into an effective release or settlement agreement expressly discharging all direct subsidiaries of Rust Engineering & Construction, Inc. and Rust International, including TRECO, from any and all liability concerning the underlying complaint.

Thus, in the interests of judicial economy, the Court recommends that the motion be denied and that TRECO not be added as a party to the complaint. *See Thibodeau*, 151 F.R.D. at 503.

#### NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Eugene W. Beaulieu  
United States Magistrate Judge

Dated this 30th day of April, 1997.